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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,201	01/27/2006	Artur Pfitzner	MBP-033xx	8282

207 7590 02/16/2007  
WEINGARTEN, SCHURGIN, GAGNEBIN & LEOVICI LLP  
TEN POST OFFICE SQUARE  
BOSTON, MA 02109

EXAMINER
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BAGGOT, BRENDAN O

ART UNIT	PAPER NUMBER
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1638

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
31 DAYS	02/16/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/566,201	PFITZNER ET AL.	
	Examiner	Art Unit	
	Brendan O. Baggot	1638	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 18-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-16 and 18-33 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-14, 20-28, drawn to a polynucleotide comprising SEQ ID NO: 1 or 2 or derivatives thereof inducible by organic compounds, vectors, hosts, and plants transformed therewith, for example.

Group II, claim(s) 15-16, 18-19, 29-33, drawn to a method of using a Bax gene to identify any putative promoters, for example.

The inventions listed as Groups I-II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The inventions are linked by the technical feature of a chemically regulatable polynucleotides and their use in hosts. However, this technical feature is not special because it does not constitute an advance over the prior art.

Ryals, et al (WO 95 19443 A, 20 July 1995) teaches chemically regulatable nucleic acids inducible by salicylic acid and uses thereof, Claims 1-3, 8 for example.

Lebel et al teaches chemically inducible genes inducible by salicylic acid and uses thereof (Lebel, et al WO 98 03536 A 1/1998, SEQ ID NO: 1, page 5, paragraph 2, lines 2-6).

Bell, et al, (1991) J. Bacteriology 173:6657-6664) teaches an isolated benzoate inducible promoter (see, e.g., page 6657, Abstract).

Federspiel et al, (Database EMBL, 7 February 2000, Federspiel: Arabidopsis thaliana chromosome I BAG T14P4 genomic sequence, complete sequence. Database accession no. AC022521) teaches SEQ ID NO: 1.

In addition to an election of one of inventions I-II listed above, if Applicant elects Group I, Applicant is required to elect one and only one of the following inventions to which the claims must be restricted.

- A: SEQ ID NO: 1;
- B: SEQ ID NO: 2.

Applicants are reminded that nucleotide sequences encoding different genetic elements are structurally distinct chemical compounds and are unrelated to one another. These sequences are thus deemed to normally constitute independent and distinct inventions within the meaning of 35 U.S.C. 121. Absent evidence to the contrary, each such nucleotide sequence is presumed to represent an independent and distinct invention, subject to a restriction requirement pursuant to 35 U.S.C. 121 and 37 CFR 1.141 et seq.

Furthermore, the invention of Group I, a polynucleotide comprising SEQ ID NO: 1 or 2 or derivatives thereof inducible by organic compounds, vectors, hosts, and plants transformed therewith, requires SEQ ID NO: 1 or SEQ ID NO: 2, each not required by Group II.

The invention of Group II, a method of using a Bax gene to identify any putative promoters, requires the Bax gene, not required by Group I. Also, the method of Group II can be practiced without the sequence of Group I.

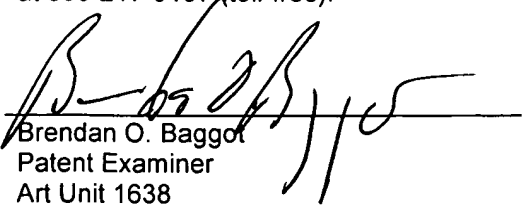
Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brendan O. Baggot whose telephone number is 571/272-5265. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on 571/272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Brendan O. Baggot  
Patent Examiner  
Art Unit 1638



David T. Fox  
Primary Examiner  
Art Unit 1638